



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CCO/159407

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 29, 2014, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on August 26, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee Early Care Administration (the agency) correctly determined that the Petitioner was overpaid child care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Children and Families  
201 East Washington Avenue  
Madison, Wisconsin 53703

By: Attorney Nancy Wettersten, DCF Legal Counsel

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner began working for [REDACTED] [REDACTED] (hereinafter referred to as [REDACTED]) on August 22, 2013. (Testimony of Petitioner; Exhibit R-5, pg. 3)
3. Petitioner received her first paycheck on September 30, 2013, which reflects gross income of \$531.00. (Testimony of Petitioner; Exhibit R-5, pgs. 3 and 4)

4. The Petitioner did not report her employment with [REDACTED] within ten days of August 22, 2013; nor did she report the increase in her income within 10-days of September 30, 2013. (Testimony of Petitioner)
5. On August 5, 2013, the agency sent the Petitioner a notice indicating that her child had an authorization for child care from June 16, 2013 through September 28, 2013. That same notice advised the Petitioner that she must inform her child care eligibility worker within 10 days of the date of any change in income. (Exhibit R-9, pgs. 5 and 8)
6. On August 23, 2013, the agency sent the Petitioner a notice indicating that her eligibility review was complete and her child care would continue in October 2013. (Exhibit R-9, pg. 9)
7. On October 14, 2013, the agency sent the Petitioner a notice indicating that her child had authorizations for childcare from September 29, 2013 through October 19, 2013. (Exhibit R-9, pg. 12)
8. On November 4, 2013, the agency sent the Petitioner a notice indicating that her child had authorizations for childcare from October 27, 2013 through November 2, 2013. (Exhibit R-9, pg. 16)
9. The agency based these authorizations and Petitioner's eligibility determinations upon the belief that Petitioner had no income. (Exhibit R5, pgs. 21 and 22)
10. On or about October 25, 2013, the Petitioner provided the agency with an Employer Verification of Earnings Form, which indicated incorrectly that she began working for [REDACTED] on October 20, 2103 and that she received her first paycheck on November 30, 2013. (Exhibit R-4)
11. The signatures for the supervisor, Kim [REDACTED], on Exhibits R-5 and R-4 look nothing alike.
12. On June 30, 2014, the agency sent the Petitioner a manual Child Care(CC) Client Overpayment Notice, claim number [REDACTED], advising her that she was overpaid child care benefits in the amount of \$54 for the period of September 1, 2013 and October 31, 2013, because she failed to report changes in income, hours of approved activity and employment. (Exhibit R-2, pg.1)
13. The agency calculated an overpayment of \$36.00 for September 2013 and an overpayment of \$18.00 for October 2013. (Exhibit R-2, pg. 2)
14. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and appeals on July 29, 2014. (Exhibit 1)

### **DISCUSSION**

The county agency is legally required to seek recovery of all overpayments of child care benefits. Wis. Stat. § 49.195(3) An overpayment occurs when an individual receives more childcare benefits that he or she was entitled to received. Wis. Admin. Code §DCF 201.04(5)(a) The county agency / Department of Children and Families must determine whether an overpayment has occurred; it must notify the recipient, and it must give the recipient an opportunity for a review and hearing. Wis. Stat. § 49.195(3), *Wisconsin Shares Child Care Manual (CCM)*, §§2.1.5.2 and 2.1.5.3 See also, Wis Stats. Sec. § 49.152(2), & § 227.42, *et. seq.*

The applicable overpayment rule requires recovery of the overpayment, regardless of fault. Wis. Admin. Code §DCF 201.04(5)(a). See in accord, *CCM* §2.1.5.2. Thus, even if the overpayment was caused by agency error, the agency may still establish an overpayment claim against the Petitioner. This provision may be viewed online by the Petitioner at <http://dcf.wisconsin.gov/childcare/wishares/pdf>.

In the case at hand, the agency asserts that the Petitioner received more child care benefits than she was entitled to, because she failed to timely report new employment with [REDACTED] and because she failed to timely report income from [REDACTED].

“Parents or other persons receiving Wisconsin Shares child care assistance must report any changes in circumstances that may affect his or her eligibility to the child care administrative agency within 10-days of the change.” *CCM §1.15.1* This includes changes involving starting or ending an approved activity / job, increases in income of at least \$250 or decreases in income of \$100 or more. *CCM §1.15.2*

The Petitioner does not dispute the fact that she obtained new employment as of August 20, 2014, nor does she dispute the fact that she received her first paycheck on September 30, 2013. That paycheck reflects gross income of \$531.00 and net income of \$446.37, well for the \$250 reporting threshold. (Exhibit R5, pg. 4) Petitioner does not dispute the fact that she failed to report these changes within ten days, as required by *CCM §§1.15.1 and 1.1.5.2* above.

Given that the Petitioner had no change in income until September 30, 2013, the agency has not adequately explained how an overpayment of benefits occurred in September 2013. However, the Petitioner was supposed to report the \$531 increase in her income by October 10, 2013. She failed to do so, and as result, neither her income, nor the childcare benefits to which she was entitled could be correctly calculated. Accordingly, it is found that the agency has met its burden to prove that an overpayment of benefits occurred in October 2013.

### **CONCLUSIONS OF LAW**

- 1) The agency correctly determined that the Petitioner was overpaid childcare benefits in October 2013.
- 2) The agency did not meet its burden to prove that an overpayment of childcare benefits occurred in September 2013.

**THEREFORE, it is**

### **ORDERED**

That the agency amend claim number [REDACTED] to reflect an overpayment for October 2013 only, in the amount of \$18.00. The agency shall take all administrative steps to complete this task within ten days of this decision.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

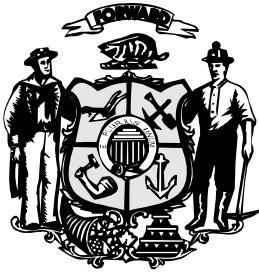
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 17th day of September, 2014.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 17, 2014.

Milwaukee Early Care Administration - MECA  
Public Assistance Collection Unit  
Child Care Fraud  
Attorney Nancy Wettersten